INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute and regulations involved	3
Statement	4
Reasons for granting the writ	14
Conclusion	23
Appendix A	1a
Appendix B	1b

CITATIONS

Cases:

Far East Conference v. *United States*, 342 U.S. 570 ... 23

Federal Security Administrator v. *Quaker Oats Co.*, 318 U.S. 218 ... 17

Hormel v. *Helvering*, 312 U.S. 552 ... 22

Houston v. *St. Louis Packing Co.*, 249 U.S. 479 ... 5, 14, 15, 16, 17

Larson v. *Domestic and Foreign Commerce Corp.*, 337 U.S. 682 ... 15

62 Cases of Jam v. *United States*, 340 U.S. 593 ... 14, 18, 19, 20

Southern Railway Co v. *Tift*, 206 U.S. 428 ... 23

St. Louis, Brownsville & Mexico Ry. v. *Brownsville Navigation District*, 304 U.S. 295 ... 23

Tank Car Corp. v. *El Dorado Terminal Co.*, 308 U.S. 422 ... 23

Texas & Pac. Ry. Co. v. *Abilene Cotton Oil Co.*, 204 U.S. 426 ... 23

United States v. *General Motors Corp.*, 323 U.S. 373 ... 15

Statutes and Regulations:

Administrative Procedure Act, Sec. 4, 60 Stat. 239, 5 U.S.C. 1003(d) ... 22

Agriculture Appropriation Act of June 30, 1906, 34 Stat. 674 ... 4

Food and Drug Act of 1906, 34 Stat. 768, *et. seq.* ... 18

Food, Drug, and Cosmetic Act, 21 U.S.C. 321, *et. seq.* ... 20

Statutes and Regulations—Continued

Meat Inspection Act of 1907, 34 Stat. 1260, 21 U.S.C. 71, *et seq.*:

	Page
Sec. 71	4, 1b
Sec. 75	4, 5, 15, 1b
Sec. 89	5, 15, 2b
Ann. Laws of Mass., ch. 94, § 187	19
Burns Ind. Stat. Ann., ch. 35, § 3207	19
Gen. Stat. of Kansas, 1959 Supp., § 65-665	19
Idaho Code, 1961 ed., § 37-123	19
Iowa Code Ann., Title 10, § 189.11	19
Ky. Rev. Stat., § 217.035(3)	19
McKinney's Consold. Laws of N.Y. Ann., Agric. and Markets Law, Art. 17, § 201	19
New Jersey Stat. Ann., § 24:5-17	19
No. Dak. Century Code Ann., § 19-02-07	19
Smith Hurd Ill. Ann. Stat., ch. 56½, § 9	19
Tenn. Code Ann., § 52-111(c)	17
Vermont Stat. Ann., 1961 Supp., § 4060	19
Vernon's Ann. Mo. Stat., § 190.975(3)	19
Vernon's Civil Statutes of the State of Texas Ann., Art. 4476-5, § 11	19
West's Ann. California Health and Safety Code, § 26490	19
Wyo. Stat. 1959 Supp., § 35-237	19
6 F.R. 1142-1143	7
17 F.R. 4845	6
25 F.R. 13952	6
26 F.R. 2756	7
26 F.R. 3070	7
26 F.R. 3570	7
26 F.R. 8398	7
26 F.R. 9772	7
7 C.F.R. 1.27	22
7 C.F.R. 1.28	22
9 C.F.R. 1.1(f)	5
9 C.F.R. Part 17	20
9 C.F.R. 17.2(b)	5
9 C.F.R. 17.4(a)	5, 23
9 C.F.R. 17.8	3b
9 C.F.R. 17.8(a)	3b
9 C.F.R. 17.8(b)	7, 10, 18, 19, 21, 22, 3b

Statutes and Regulations—Continued

	Page
9 C.F.R. 17.8(c)	3b
9 C.F.R. 17.8(c)(13)	6
9 C.F.R. 17.8(c)(15)	6
9 C.F.R. 17.8(c)(25)	6
9 C.F.R. 17.8(c)(27)	5
9 C.F.R. 17.8(c)(35)	5, 6
9 C.F.R. 17.8(c)(38)	6
9 C.F.R. 17.8(c)(39)	6
9 C.F.R. 17.8(c)(40)	5, 6
9 C.F.R. 17.8(c)(42)	6
9 C.F.R. 17.8(c)(49)	6, 22, 3b
9 C.F.R. (1962 Supp.) 17.8(c)(49)	7
9 C.F.R. 17.8(c)(52)	6
9 C.F.R. 17.8(c)(54)	6, 22, 3b
9 C.F.R. (1962 Supp.) 17.8(c)(54)	7
9 C.F.R. 17.8(c)(55)	6
9 C.F.R. Part 18	20
9 C.F.R. 18.7(g)	6
9 C.F.R. 18.7(h)	6
9 C.F.R. 21.1	23
9 C.F.R. 28.2	5, 6
9 C.F.R. 28.3	5, 6
Miscellaneous:	
Bureau of Animal Industry Order 211:	
Amendment 3, Aug. 29, 1925, Reg. 16, sec. 2, par. 5	19
Amendment 3, Aug. 29, 1925, Reg. 17, sec. 9, par. 3	8
Amendment 8, May 8, 1935, Reg. 16, sec. 2, par. 5	19

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. —

ORVILLE L. FREEMAN, SECRETARY OF AGRICULTURE, AND M. R. CLARKSON, ACTING ADMINISTRATOR, AGRICULTURAL RESEARCH SERVICE, DEPARTMENT OF AGRICULTURE, PETITIONERS

v.

ARMOUR AND COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The Solicitor General, on behalf of the Secretary of Agriculture and the Acting Administrator, Agricultural Research Service, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled case on February 8, 1962.

OPINIONS BELOW.

The opinion (J.A. 99a)[1] and findings of fact and conclusions of law (J.A. 100a–104a) of the district

[1] "J.A." refers to the Joint Appendix in the court of appeals; "R." refers to the record of the proceedings in the court of appeals. Both have been lodged with the clerk as the record in this Court.

court are not reported. The opinions of the court of appeals rendered on February 8, 1962 (R. 109–112; App. A, *infra*, pp. 1a–4a), and on April 2 and 13 (R. 125–155; App. A, *infra*, pp. 4a–30a), are not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on February 8, 1962 (R. 113). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).[2]

QUESTIONS PRESENTED

Regulations issued by the Secretary of Agriculture under the Meat Inspection Act of 1907 establish standards to which meat and meat products must conform in order to bear such labels as HAM, BEEF BRISKET, SAUSAGE, BEEF TONGUE, etc. In the case of cured pork products, including ham, the regulation from 1952 until December 1960 provided that the product should contain no added water. In December 1960, the regulation was amended to permit the use of the label HAM upon pork products containing up to ten percent added water.

Another long-standing regulation issued by the Secretary under the Act requires meat products sold under such labels as HAM, BEEF BRISKET, SAUSAGE and BEEF TONGUE to be labeled with the prefix IMITATION when the product sold resembles but does not conform to the product standards prescribed by the Secretary.

---

[2] Petitioners' timely motion for an extension of time to file a petition for rehearing was denied on March 8, 1962, after the time for filing the petition had expired. See n. 7, *infra*, p. 11.

In November 1961, the Secretary amended the regulation establishing the standard for labeling cured pork products, including HAM, in such a way as to restore the prohibition against added water. Respondent's application for a preliminary injunction against the enforcement of the amendment was denied by the district court but granted by the court of appeals.

The questions presented are:

1. Whether the amendment to the standards applicable to the labeling of certain meat products, including those labeled HAM, is invalid as applied to pork hams to which the packer has added ten percent of their weight in water, because another regulation requires hams which do not conform to the standard definition to be labeled IMITATION HAM.

2. Whether the court of appeals erred in reversing the order denying a preliminary injunction against the enforcement of the amended regulation on the ground that the use of "imitation" (as in the label IMITATION HAM) is misleading, when respondent had failed to raise any question concerning the regulation requiring the use of IMITATION in the district court and no record had been made concerning its validity.

STATUTE AND REGULATIONS INVOLVED

The pertinent portions of the Meat Inspection Act of 1907, 34 Stat. 1260, 21 U.S.C. 71, *et seq.*, and the regulations promulgated thereunder, are set forth in Appendix B, *infra*, pp. 1b–3b.